SMALL CLAIMS COURT

GENERAL INFORMATION AND POST-JUDGMENT COLLECTIONS

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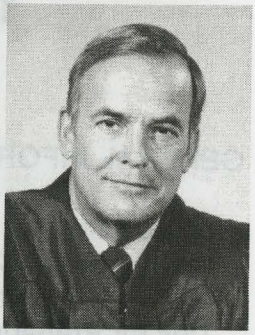
PLEASE RETURN THIS BOOKLET TO THE CIRCUIT CLERK'S OFFICE ONCE YOUR CLAIM HAS BEEN RESOLVED.

GENERAL INFORMATION



Dear Kentucky Citizen:

Small Claims Court provides individuals in the Commonwealth an opportunity to handle legal matters informally, with minimal expense. This, in turn, makes the judicial system available to all citizens without delay. Implemented in 1976, thousands of cases have been disposed in Small Claims Court.

I know you will find this handbook helpful. It will answer a number of questions you may have regarding small claims issues.

Sincerely,

Robert F Stephens

Robert F. Stephens
Chief Justice
Kentucky Supreme Court

INTRODUCTION

Warranty and Disclaimers

This Consumer Guide to Small Claims Court WILL NOT:
. . .provide you with any legal advice;
. . .make you an authority on Small Claims;
. . .guarantee you will win your case or collect a judgment;
. . .take the place of an attorney.

But the Consumer Guide SHOULD:
. . .help you understand the small claims process;
. . .provide step-by-step guidance through numerous procedures;
. . .provide step-by-step guidance on collection procedures if you win.

How The Clerk Can Help

Your circuit court clerk will provide you with the necessary forms; however, you must remember that the clerk is not an attorney and cannot give legal advice.

Lawyer Referral

If you need an attorney, the Kentucky Bar Association (1-800-372-2999), the Louisville Bar Association (502-583-1801) and the Northern Kentucky Bar Association Lawyer Referral Service (606-781-1300) will refer you to an attorney in your area. A small fee for the attorney's time will be charged, but this amount will be discussed with you prior to your meeting.

WHAT IS SMALL CLAIMS COURT

The Small Claims division of District Court in each Kentucky county settles disputes involving money or personal property valued at $1,500 or less, exclusive of interest and costs. The procedures of the court are informal. You can file a claim or defend yourself without an attorney. However, you can employ an attorney to handle your case if you wish.

In Small Claims Court the two parties involved in the dispute go to court at a preassigned time and tell their side of the story to the judge. The judge makes a decision based on the law governing the facts presented. No juries are used in Small Claims Court.

When Should You Use Small Claims Court

Before filing a suit in Small Claims Court, contact the other party and try to settle your dispute. A settlement out of court will save you both time and money. If a settlement is reached, put all the terms of your agreement in writing and have it signed by both you and the other party.

If you and the other party cannot settle your differences, consider other means of resolving your dispute. The Kentucky Attorney General's Consumer Protection Division provides mediation services on consumer protection matters free of charge. Call 1-800-432-9257 toll-free to request a complaint form.

Only after you are sure no settlement can be reached should you file suit in Small Claims Court.

Before filing suit, have some idea if the person you are suing has any way of paying should you win your case. In some cases, a person may be "judgment proof" because of a lack of income or property; therefore, even if you win you could not collect your judgment.

It is important to file suit immediately after you realize that no settlement can be reached. The law sets a specific time period (statutes of limitation) in which a person must file suit. After this period expires, the person cannot file suit. Statutes of limitation vary with the type of claim. Claims involving oral contracts must be brought within five years from the time the contract was made. Written contracts have a 15 year statute of limitation, and some personal injury claims have a one year statute of limitation. If in doubt about whether you are bringing your claim within the proper time, go ahead and file; however, if too much time has passed, the judge will dismiss the claim, and you will lose your filing fee.

Who Can Use The Small Claims Procedure

Any person, corporation, or business with a claim for money or personal property of $1,500 or less may use Small Claims Court, EXCEPT the following:

(1) a person or organization in the business of lending money at interest;

(2) a collection agency or a collection agent;

(3) a person or organization with an assigned claim.

A parent or legal guardian must appear in Small Claims Court on behalf of a person under 18 years of age or a person adjudged mentally disabled person.

An individual may not file more than 25 claims in any one calendar year in the Small Claims Court. A business is entitled to 25 claims for each established location in the district, if that business has been engaged in trade or commerce for at least six months. However, limitations on the number of claims filed and other requirements of this section shall not apply to claims initiated by city, county or urban county governments.

If you are a corporation or partnership and a party to a small claims action, then the person who comes to the hearing must be (1) an officer of the corporation, (2) a person regularly employed in a managerial capacity by the corporation or partnership, or (3) an attorney.

What Kind Of Claims Can Be Filed In Small Claims Court

If you believe you have been wronged and the claim involves $1,500 or less, this court is available to you. You may sue for actual damages and court costs only. Certain kinds of claims, however, are not allowed in Small Claims Court. Criminal actions and cases of libel, slander, alienation of affections, malicious prosecution and abuse of process must be brought in another court.

Small Claims Court May Not Be The Answer

Complicated lawsuits should not be filed in Small Claims Court even if the loss is under $1,500.

Small Claims Court is not effective in resolving complaints when you cannot find the wrongdoer.

Small Claims Court is not the answer when you have been wronged by fly-by-night operators, companies no longer in business, people who have filed bankruptcy or individuals who have no money or property.

HOW TO FILE SUIT

Generally, there are two parties to a lawsuit—the plaintiff and the defendant. The person or business who starts the lawsuit is called the plaintiff. The party being sued is called the defendant. A lawsuit begins when the plaintiff files a legal paper called a complaint with the Small Claims Court clerk explaining the disagreement.

Follow these steps to file suit:

1. Decide in what county to file your small claims complaint and go to the court clerk's office in that county's courthouse. Your small claims complaint may be filed in the county where the person you are suing lives or does business (operates a place of business or dispatches sales representatives for the purpose of selling a product or service). If you are suing about an act that caused injury to someone or something, you may sue in the county where the act happened. If you are suing a corporation about a breach of contract, then you may sue in the county in which the contract was made or where the contract was to have been performed. If your complaint concerns a contract but the defendant is not a corporation, then different rules apply and it may be best to file the complaint where the defendant lives.

2. Tell the clerk that you wish to file a small claims action. You will be given a complaint form to fill out. The clerk is not an attorney and is not legally authorized to fill this out for you or provide you with legal advice.

3. The maximum amount of money for which you can sue is $1,500. Even if your claim is for more than $1,500, you can choose to sue for only $1,500 rather than go through a trial in another court. The amount of your claim should include both the actual amount of damage due and any extra expenses you paid because of the damage. You must be able to prove the amount of damages for which you are suing.

4. You must give the correct address of the person you are suing. It is not the clerk's job to find an address for you. If you do not have the address, consider looking in the phone book, tax records, police file, or licensing records. If your suit is against a business, call the Secretary of State (502/564-7330) to determine if the business is incorporated and the corporation's process agent. Give the Small Claims Court clerk the process agent's name and address for service.

If your claim is against an out of state corporation with no process agent listed for Kentucky, then the notice must be sent to:

Secretary of State
700 Capitol Avenue, STE 150
Frankfort, KY 40601

You will be responsible for the out-of-state service fee. If you cannot determine who to sue and there are several parties involved, your claim may be too complex for Small Claims Court. In this case consult a private attorney for advice and assistance.

5. After completing the complaint form, tell the clerk if you want the defendant to be sent a copy by certified mail, return receipt requested, or if you want the sheriff to personally deliver the complaint to the defendant. You must pay the mailing cost or the sheriff's fee in advance.

6. If the complaint was sent to the defendant by certified mail and the post office could not deliver it, then you may want to ask the sheriff to deliver the complaint.

7. Check back with the clerk to see that the defendant received a copy of the complaint. The court does not send you this information. REMEMBER, your case will not be heard by the judge until the defendant receives a copy of the complaint.

8. Any cost incurred when filing your claim is considered court cost which you may include in the amount of your judgment.

9. The hearing date will be set within 20 to 40 days from the date the defendant received a copy of the complaint.

TIPS FOR PREPARING YOUR CASE

Plan Your Presentation

Plan what you are going to say and assemble your evidence. You must present all the facts concerning your case to the judge in a simple, logical manner. Start at the beginning and tell your story to the end. You may benefit by observing another hearing prior to your own to get an idea of how Small Claims Court operates.

Evidence

If you are the plaintiff, you need to bring originals (or copies, if you cannot bring originals) of contracts, letters, receipts, canceled checks, leases, estimates, police reports, photographs, and/or the actual damaged goods with you to court. The type of evidence you need depends on your case and what you need to prove. You must present evidence to prove every point in your case.

Witnesses qualified to report on damage or liability who are not involved with either party may give expert testimony to the judge. Individuals who were actually involved in the original matter can give their version of the story in court. You may informally ask witnesses to appear in court or through the formal process of a subpoena. A witness served with a subpoena is legally required to appear at the hearing. The subpoena may be served by the sheriff or by any person over 18 years old by delivering or offering to deliver a copy to the witness. Allow plenty of time before the hearing date for service.

You may also present your testimony and opinion. Certain evidence, such as hearsay evidence (something you have heard but of which you do not have firsthand knowledge), may not be used. The judge decides what evidence is acceptable.

WHAT HAPPENS AT THE HEARING

On your hearing date, get to the courtroom early. Have the evidence and witnesses you need to prove your case with you.

When your case is called by the court officer, approach the front of the courtroom and tell the judge that you are present. The judge will then swear in both parties by asking them if they will tell the truth about the disagreement. The plaintiff will tell his/her side of the story. The judge may ask questions so that the judge understands your claim or defense better. At the time you present your side of the story you may also call any witnesses or present any evidence to the judge. Each party can also question the other party and his/her witnesses.

The hearing is informal. Keep your story as short as possible without neglecting important facts. The judge is concerned only with the facts relevant to the case. The judge is the sole individual who will decide the case and the only person you will have to convince. Even though you are familiar with the case, the judge is not; therefore, it is important to state everything as clearly as possible and support your statements with evidence.

Some pointers for your courtroom appearance: dress neatly; stand when you talk to the judge; be polite at all times; introduce yourself; be brief; be prepared; listen to the judge; and be yourself (don't attempt to act like a lawyer).

If you are the plaintiff and the defendant defaults (does not show up for the hearing), you must still be prepared to show the court proof of your claim.

If you do not appear for the hearing, the case may be dismissed, and the court may award a counterclaim if the other person can prove his/her claim.

If the plaintiff and defendant reach a settlement before the hearing, they should get a settlement form from the clerk, sign it, and

give it to the judge at the hearing. If the judge accepts the settlement, it then becomes a legally enforceable agreement.

YOU ARE THE DEFENDANT

How To Respond To A Lawsuit

When you are sued, you will receive a notice from the court clerk or the sheriff. The notice will tell you the name and address of the person suing you, the type of complaint, the amount of money or property claimed to be owed by you to the plaintiff, and the time and date of the court hearing.

When you are sued in Small Claims Court, consider the following ways to handle your case:

Settle Your Differences

After you have been sued, you and the plaintiff still have an opportunity to settle your differences out of court. Consider compromise. Both time and money may be saved by all parties concerned by resolving your case prior to a court hearing. Notify the plaintiff before the court hearing of your settlement offer if you wish to avoid a court hearing.

If an agreement is reached, obtain a settlement form from the clerk, have it signed by both parties, and file the settlement with the judge on the day of the court hearing. If the judge accepts the settlement, both parties will be required by law to obey it.

Defend Your Case In Court

You may consider defending yourself by: (1) arguing the dollar claim is exaggerated; (2) denying liability, or (3) filing a counterclaim (a suit in reverse against the party suing you).

Can You Counterclaim

If the person suing you owes you money or personal property related to the same dispute involved in the lawsuit against you, you may wish to file a counterclaim.

To file a counterclaim, you must follow essentially the same steps as for filing a complaint. First, go to the office of the court clerk in the county where the original claim was filed at least one week before the hearing date. You must fill out your form and return it to the clerk's office at least five days before your hearing date. A copy must be delivered to the plaintiff at least five days before the hearing date. The judge will hear the plaintiff's claim and the defendant's counterclaim together.

Request For A Jury Trial

If you want a jury trial, the claim must be $250 or more. You must give notice to the court clerk at least seven days before the hearing date that you want a jury trial. The claim will then automatically be removed from Small Claims Court to the regular Civil Division of District Court for jury trial. **You will be charged additional fees.** The Civil Division of District Court uses a more formal procedure than Small Claims Court and may take longer to hear the case. In addition, you may also need to hire an attorney to argue your case before the jury.

If You Do Not Respond To A Lawsuit

If you receive notice that you have been sued, you must appear in court on the designated hearing date. If you do not appear at the court hearing, the judge may enter a legal judgment against you for all money or property claimed by the plaintiff and require you to pay all court costs. A judgment is an official court order which may be enforced by garnishment of your wages or execution on your property. Never miss a scheduled court hearing.

APPEAL

Should You Appeal

If you believe the judge's decision is wrong because the judge did not apply the law correctly, you can appeal. The appeal will be to circuit court, and the appellate judge will not hear any **new** evidence. The judge will only review the proceedings from Small Claims Court. Therefore, you should not appeal just because you did not win the suit. Appeals are complicated; therefore, before you appeal you should consider getting legal assistance to help you decide if you have grounds for an appeal. Appeals are also costly, and if you lose, you will have to pay the original judgment and perhaps the court costs of the appeal and your attorney.

Filing An Appeal

You must file a **notice** of appeal with the Small Claims Court clerk within ten (10) days of the date your small claims judgment was "entered" (stamped of record) in the Small Claims Court clerk's office. Within thirty (30) days of filing your notice of appeal you **must** file a **statement** of appeal with the clerk of the **circuit court.** The statement of appeal must contain the following information:

1. Tell the judge if you want an oral argument; that is, if you want to be heard in person before the judge.

2. Write down a fair and accurate summary of the evidence heard by the Small Claims Court.

3. Write down a short statement why you believe the Small Claims Court erred in your judgment.

4. Explain to the Judge the relief you believe you are entitled.

It is absolutely necessary that you follow these time limitations. Both the **notice** and **statement** of appeal need to be filed with the clerk of the court in the same county where you filed your small

claims action. There are no standard forms for either the notice or statement of appeal.

POST
JUDGMENT
COLLECTIONS

POST JUDGMENT COLLECTIONS

IF YOU WIN YOUR LAWSUIT

After the judge has heard both sides of the lawsuit, the judge will make a decision based upon the facts of the case and will enter a judgment which will state who won, how much is to be paid, and how it is to be paid.

Judgment In Small Claims Court

A judgment in small claims court is a legally enforceable court order entitling you to receive the money awarded to you by the court. When the judge decides the case, the losing party may be ordered to pay the winning party the money owed or to arrange to fix the damaged goods. However, on occasion, a judge will allow the losing party additional time before the judgment must be paid.

If The Judgment Is Not Paid By the Date Due

If the losing party fails to pay the judgment ordered by the court within ten (10) days of the date due, additional action may be necessary. Although a judgment is a legally enforceable court order, you are responsible for taking any additional action necessary to collect your money. Contact the losing party to attempt to collect your judgment. If you can collect in this way, you will save both time and money and avoid the complexity of post-judgment collection procedures.

If the losing party still refuses to pay you the amount ordered by the court, you may wish to take legal action to enforce your judgment. There are two separate post-judgment collection procedures you may take to collect your judgment. You can enforce your judgment by either garnishment of the losing party's wages or bank account, or by execution. These post-judgment collection procedures may be complex and difficult. It is important that you follow procedures closely if you are to successfully collect your judgment. In some cases, you may need to consult with a private attorney.

Before Taking Action To Collect Your Judgment Find Out The Losing Party's Assets

In order to legally enforce your judgment, you need to know if the losing party owns any property, such as land or an automobile, which can be seized or has a bank account or a salary from an employer which can be garnished. If you do not know this information and cannot learn it on your own, you may serve the losing party with written questions to find out the information you need to know.

The following steps will help you obtain the information you need to know about the losing party's assets.

1. Ask the clerk for a copy of the Small Claims Post Judgment Interrogatories Form. This form contains some basic questions that will assist you in obtaining the information you need to know. Pursuant to court rule you may add an additional 15 questions. The clerk **may not** help you write any of these additional questions. The purpose of these questions are for your benefit; they are **NOT** to be filed with the clerk.

2. Send a copy of the questions to the losing party. The losing party must answer the questions under oath and return a copy of the answers to you within 30 days after receiving the questions. To insure the losing party receives the questions you may want to send them by certified mail. Be sure to keep a copy of the questions for yourself.

3. If the losing party fails to answer the questions within the 30 days you may, by written motion, request that the court issue an order requiring the losing party to answer your questions.

GARNISHMENT

The first method of legally enforcing your judgment is called garnishment. Garnishment is a procedure whereby you can obtain money or property which belongs to the judgment debtor (the person who lost the case) but is in the hands of a third person. There are several types of garnishment. The type you are probably most familiar with is garnishment of wages. Additionally, if the losing party has money in any bank account, that money may be garnished.

Important Steps In Garnishment

In order to get a garnishment, you must file an affidavit in the same court clerk's office in which the judgment was entered. Check with the court clerk to obtain the appropriate form.

When your affidavit is filed in the clerk's office, you receive an Order of Garnishment directing the sheriff to summon the garnishee. The garnishee is the person who has the debtor's money or property that you want.

The Order of Garnishment must be served on the garnishee. You may have this served by the sheriff or sent by first class or certified mail. Expenses incurred in this service as well as the cost of garnishment are recoverable as costs and should be added to the amount requested in your garnishment.

The garnishee, after being served, must appear (either in person or by the affidavit of the garnishee) with the money or appear to claim and prove an exemption within 20 days from the date the garnishee was served. If the garnishee does not answer within 20 days, you can compel the garnishee to appear in court by filing a motion with the court. This is the same as a contempt proceeding. File the motion and ask the judge to issue an order requiring the garnishee to appear. You then examine the garnishee under oath to find out why the garnishee has not answered and what assets the garnishee holds. If the garnishee does not appear after being

ordered to do so by the court, you may ask for an order for the garnishee's arrest.

The garnishee is required to pay all of the non-exempt money the garnishee holds, not to exceed the plaintiff's claim and cost. The garnishee might not have all of the amount of your judgment; but what money the garnishee has shall be paid and applied toward your judgment, unless the garnishee proves to the court that this money or property is exempt from garnishment. Money received for support of dependent children and benefits received by reason of age, illness, disability or length of service are exempt. If the garnishee fails to pay money you think the garnishee has or fails to answer to your satisfaction, you may bring a separate cause of action against the garnishee by petition. This is an independent claim, and you may want to seek legal advice in pursuing this. **Your Order of Garnishment stays in effect until the judgment is paid.**

If the creditor (the person who won the case) in a **wage** garnishment case is not represented by an attorney, the garnishee will forward funds to the court clerk. The clerk is required to hold the garnished funds for 15 days after the date of the employer's check before disbursing the funds.

What To Do If You Have A Judgment In One County And Find Funds In Another County

If you have a judgment in one county and discover someone who has money or property of the debtor in another county, an Order of Garnishment can still be issued by the court in which you have obtained the judgment. Send this order and the sheriff's fee to the sheriff of the county in which the funds are being held for service on the garnishee. The garnishee will then be required to file an answer or send the funds to the court where the judgment was obtained.

How To Obtain Out-of-State Wages

If the debtor works for an employer located out-of-state, you may garnish wages only if the employer is subject to process in Kentucky. Call the Secretary of State's Office (502/564-7330) to determine if that employer has a process agent in Kentucky. If so, you can then serve the Order of Garnishment on that process agent. If the employer is not subject to process in Kentucky, you probably cannot garnish these wages.

Discharge of Employee

No employer can discharge an employee because the employee's wages are garnished for any one indebtedness.

EXECUTION ON YOUR JUDGMENT

The second method of legally enforcing your judgment is called execution. This is a procedure which commands the sheriff to seize property of the debtor which can be sold and the money from the sale applied to your judgment.

Procedure To Follow for Execution

1. An execution cannot be issued until ten (10) days after you obtain your judgment. After this period has expired, you may obtain an execution form from the court clerk in the county where the judgment was rendered. The sheriff "executes" it by searching for property of the debtor within the county.

2. If you know there is no property in the county where the judgment was obtained, file an affidavit with the court clerk stating there is not sufficient property in that county and have an execution issued in any county.

3. Kentucky law states that the defendant's personal property is subject to execution first before any real estate. Personal property includes items such as household goods, tools, equipment, and

automobiles. (See "Problems in Execution") If there is not enough personal property, the sheriff may then execute upon land. Give the sheriff an execution for personal property and an execution for realty at the same time, so that if insufficient personal property is available, the sheriff can then execute on the real estate.

4. When real estate is in another county you must send the execution to the sheriff of the county where the real estate is located.

5. The sheriff must make a return within 60 days of the issuance of the execution. If property belonging to the debtor is found by the sheriff which is not exempt from execution, the sheriff notes this fact on the sheriff's return.

6. The sheriff will usually require you to post a bond to pay for any damages which might possibly be incurred in the event the attachment is proved wrongful in any way. Bonds may be purchased through an insurance company.

7. If you have an execution on the debtor's property and the debt still remains, you may need to have the property sold in order to collect your debt. A court order must be issued.

8. Any payment made by the debtor to the sheriff shall be applied toward payment of your judgment.

Problems In Execution

Certain items are exempt from execution up to a certain value. Specific examples, among others, are: (a) household furnishings, jewelry and personal clothing (up to $3,000 in value); (b) farm tools, equipment and livestock (up to $3,000 in value); (c) one automobile (up to $2,500 in value); (d) trade tools (up to $300 in value); (3) professional library and office equipment of ministers, attorneys, physicians, surgeons, chiropractors, dentists and veterinarians (up to $1000); (f) the debtor's real estate where he/she lives (up to $5,000 total); (g) insurance benefits; (h) police and fire fighters' pensions from first through fourth class cities.

DIFFICULTY IN COLLECTING YOUR JUDGMENT

There are instances when a judgment debtor has no job or other income and no assets that may be seized. This type of debtor is "judgment proof" and there is no way to immediately collect your judgment. Also collecting any money from "fly-by-night operators" firms located in another area, companies no longer in business or people who have filed bankruptcy may be impossible. In addition, if you obtained your judgment because the defendant did not appear, and the defendant has already moved and left no forwarding address, you will probably be unable to collect your judgment due to the fact that locating the defendant will be impossible. However, your judgment is good for 15 years.

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